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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OUR CHILDREN'S EARTH FOUNDATION, a
non-profit corporation,

Plaintiff,

v.

ANDREW WHEELER, in his official capacity
as Administrator of the United States
Environmental Protection Agency,

Defendant.

Civil Case No. 3:19-cv-7125-WHA

**THIRD STIPULATION TO MODIFY
CONSENT DECREE DEADLINE AND
PROPOSED ORDER**

1 Pursuant to Civil L.R. 6-1(b), 6-2, 7-12, and paragraph 11 of the Consent Decree (“Consent
2 Decree”) entered in this case (Dkt. No. 32-1), Plaintiff, Our Children’s Earth Foundation, and
3 defendants, the United States Environmental Protection Agency *et al.* (“EPA”), (together, “the Parties”)
4 stipulate to further continue the deadline for the appropriate EPA official to sign either: (i) a final rule
5 containing revisions to National Emissions Standard for Hazardous Air Pollutants (“NESHAP”) Subpart
6 M under section 112(d)(6) of the Clean Air Act, 42 U.S.C. § 7412(d)(6); or (ii) a final determination
7 under section 112(d)(6) not to revise NESHAP Subpart M, extending the deadline from February 1,
8 2024 to **December 15, 2024**.

9 On October 14, 2020, the Parties filed a motion to approve the Consent Decree to resolve claims
10 Plaintiff brought against EPA. Dkt. No. 32. The Consent Decree included several deadlines where EPA
11 (1) agreed to either review or revise New Source Performance Standards (“NSPS”) and NESHAPs
12 governing a number of sources by dates certain and (2) agreed to sign either final rules or final
13 determinations not to revise NSPSs and NESHAPs governing a number of sources by dates certain. *See*
14 Consent Decree ¶¶ 2-8. The Court signed the Consent Decree on October 20, 2020. Dkt. No. 33.

15 Paragraph 11 of the Consent Decree provides that “[t]he deadlines set forth in Paragraphs 2–8
16 hereof may be modified only by: (a) written stipulation of the Parties with notice to the Court; or (b) the
17 Court following motion of any party to this Consent Decree, pursuant to the Federal Rules of Civil
18 Procedure, and upon consideration of any response by the non-moving party.” Consent Decree ¶ 11.

19 Paragraph 8.b of the Consent Decree specifically establishes that “EPA shall sign either: (i) a
20 final rule containing revisions [to the Dry Cleaning Facilities: National Perchloroethylene Air Emission
21 Standards NESHAP] Subpart M under section 112(d)(6) of the Act, 42 U.S.C. § 7412(d)(6); or (ii) a
22 final determination under section 112(d)(6) not to revise NESHAP Subpart M” by no later than
23 December 1, 2022. Consent Decree ¶ 8.b.

24 Invoking Paragraph 11 of the Consent Decree, on August 18, 2022, the Parties stipulated to
25 continue the December 1, 2022 deadline to June 1, 2023. Dkt. Nos. 41, 42. On April 11, 2023, the
26 Parties stipulated to further continue the June 1, 2023 deadline to February 1, 2024. Dkt. Nos. 43, 44.
27 The Parties now stipulate to continue the deadline to December 15, 2024.

1 The Parties agree that continuing the current February 1, 2024 deadline to December 15, 2024
2 for EPA to take final action as noted above is fair, reasonable, and in the public's interest.

3 On December 14, 2022, EPA published a revised risk determination under the Toxic Substances
4 Control Act ("TSCA") with respect to Perchloroethylene ("PCE") concluding "that PCE, as a whole
5 chemical substance, presents an unreasonable risk of injury to health when evaluated under its
6 conditions of use." 87 Fed. Reg. 76481 (Dec. 14, 2022); *see also* 15 U.S.C. § 2605(a) (when EPA
7 determines that a chemical substance presents an unreasonable risk to health, TSCA requires EPA to
8 promulgate a rule "to the extent necessary so that [the chemical substance] no longer presents such
9 risk"). Accordingly, EPA has begun developing a TSCA regulation with respect to PCE. 87 Fed. Reg. at
10 76487. Because the forthcoming final TSCA rule regulating PCE will likely impact how EPA may
11 address a NESHAP amendment for PCE with respect to dry cleaning facilities, the Parties stipulated for
12 a continuance of the deadline for EPA to take final action with respect to a NESHAP amendment for
13 PCE with respect to dry cleaners from June 1, 2023 to February 1, 2024, which was granted by this
14 Court on May 8, 2023. Dkt. Nos. 43, 44.

15 Since then, there has been further progress with respect to EPA's TSCA PCE rulemaking. On
16 June 16, 2023, EPA published a notice of proposed rulemaking to address the unreasonable risk of
17 injury to human health presented by PCE. *See* "Perchloroethylene (PCE); Regulation Under the Toxic
18 Substances Control Act (TSCA)," 88 Fed. Reg. 39652 (June 16, 2023). EPA now anticipates publishing
19 its final rule around August 2024. *See* OMB "Perchloroethylene (PCE); Rulemaking Under the Toxic
20 Substances Control Act (TSCA)" Regulation Agenda, *available at*
21 <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2070-AK84> (last accessed
22 November 8, 2023). Because the forthcoming final TSCA rule regulating PCE will not be published
23 until the summer of 2024, the Parties agree that EPA will need more time to consider what final action it
24 will take with respect to a NESHAP amendment for PCE emissions at dry cleaning facilities and agree
25 that an extension of the Consent Decree deadline to December 15, 2024 is reasonable.

26 The Parties have sought just two other modifications with respect to deadlines set forth in the
27 Consent Decree and EPA has met every other Consent Decree deadline thus far. *See* Consent Decree ¶¶
2.a, 2.b, 3.a, 3.b, 4.a, 4.b, 5.a, 6.a, 6.b, 7.a, 7.b, 8.a.

PURSUANT TO STIPULATION, IT IS SO ORDERED this _____ day of _____, 2023

Hon. William Alsup
United States District Judge